

CITY OF LAGO VISTA, TEXAS

ORDINANCE NO. 13-05-16-01

AN ORDINANCE OF THE CITY OF LAGO VISTA, TEXAS ADDING A NEW ARTICLE 8.1000, SEX OFFENDERS, CHAPTER 8, OFFENCES AND NUISANCES, CODE OF ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONFLICT CLAUSE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article 42.12(13)(B) of the Texas Code of Criminal Procedure provides a 1,000-foot safety zone for children as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS, the City has a compelling interest in protecting the safety of children by reducing opportunities for sexual predators to come in contact with children; and

WHEREAS, the City Council wishes to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from establishing temporary or permanent residency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS:

Section 1.

THAT, a new Article 8.1000, Chapter 8, Code of Ordinances, Exhibit 1, attached hereto and made a part of this ordinance is adopted.

Section 2. Severability.

Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

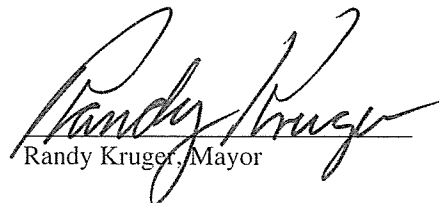
Section 3. Conflicts.

Any portions of ordinance in conflict herewith are hereby repealed to the extent of such conflict only.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

Section 5. Effective Date.

This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.


Randy Kruger, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read 'C. Buckner', written over a horizontal line.

Christina Buckner, City Secretary

On a motion by D'Anne Gloris, seconded by Richard Bohn, the above ordinance was passed and approved this 16th day of May, 2013.

Exhibit 1

ARTICLE 8.1000 Sex Offenders

Sec. 8-1001 Regulation of sex offender residency.

(a) *Finding and Intent.* The City Council finds that sex offenders who are required to register as a sexual predator under V.T.C.A., Texas Code of Criminal Procedure, Ch. 62, present an extreme threat to the health, safety and welfare of children. Sex offenders are likely to repeat an offense, have many more victims than are ever reported, are prosecuted for only a fraction of their actual sexual offenses, and children not only lack the ability to protect themselves but additional measures should be taken to keep known sex offenders from having access to children in areas where children generally feel safe.

It is the intent of this article to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from establishing temporary or permanent residency.

(b) *Definitions.* The following words, terms, and phrases; when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Any premises where children commonly gather: This term includes, but is not limited to, a playground, playscape, school, day care facility, crisis center or shelter, skate park, youth soccer or baseball field, video arcade facility, public or private youth center, or public swimming pool, as those terms are commonly understood and/or defined in V.T.C.A., Health and Safety Code, § 481.134.

Minor: A minor is a person younger than seventeen (17) years of age.

Residence means the place within the City:

- (i) where a person registers or verifies under Article 62.152, Texas Code of Criminal Procedure, as the person's residence;
- (ii) where a person abides, lodges or resides for more than seven consecutive days;
- (iii) where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent residence;
- (iv) where a person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent residence; or

(c) *Sex Offender Residency Prohibition; Penalty; and Exceptions.*

- (1) It is unlawful for a person who is required to register on the Texas Department of Public Safety's Sex Offender Database pursuant to V.T.C.A., Texas Code of Criminal Procedure, Ch. 62 because of a violation involving a victim who was less than seventeen (17) years of age, to establish a permanent or temporary Residence within one thousand (1,000) feet of any premise where children commonly gather. It shall be prima facie evidence that this chapter applies to such a person if the person's record appears on the database and the database indicates that the victim was less than seventeen (17) years of age.
- (2) For the purpose of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent or temporary Residence to the nearest property line of the premises where children commonly gather, as

described herein, or in the case of multiple Residences on one (1) property, measuring from the nearest wall of the building or structure occupied or the parking lot/driveway, whichever is closer to the nearest property line of the premises where children commonly gather, as described herein. A map generally depicting the prohibited areas is available at the Lago Vista Police Department.

- (3) *Civil and Criminal Penalties.* The City shall have the power to administer and enforce the provisions of this section as may be required by governing law. Any person violating any provision of this section is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this section is hereby declared to be a nuisance.
- a. *Criminal prosecution.* Any person, firm or corporation violating a provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00) per violation. Each day that any violation of this section shall continue shall constitute a separate offense.
- b. *Civil remedies.* Nothing in this chapter shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this chapter and to seek remedies as allowed by law including, but not limited to, the following:
- (i) Injunctive relief to prevent specific conduct that violates the section or to require specific conduct that is necessary for compliance with the section; and
- (ii) A civil penalty up to one hundred dollars (\$100.00) per day when it is shown that the defendant was actually notified of the provisions of the section and after receiving notice committed acts in violation of the section or failed to take action necessary for compliance with the section; and
- (iii). Other available relief.
- (4) *Culpable Mental State Not Required:* Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this chapter.
- (5) *Exceptions.* This section does not apply to the following situations:
- a. The person is not required to comply with Chapter 62 of the Texas Code of Criminal Procedure
- b. The person was a minor when he/she committed the offense and was not convicted as an adult.
- c. The person is a minor.
- d. The premises where children commonly gather, as specified herein, within one thousand (1,000) feet of the person's permanent Residence was opened after the person established the permanent or temporary Residence and complied with all sex offender registration laws of the State of Texas.
- e. The person proves to the Texas Department of Public Safety that the information on the database is incorrect and that, if corrected, this chapter would not apply to the person erroneously listed on the database.
- f. The person has established permanent residency prior to the effective date of this ordinance by owning the property in fee simple and said person is in compliance with all sex offender registration laws of the State of Texas.

(6) *Property Owners Prohibited From Renting Real Property to Sexual Offenders; Penalty.*

- (a) It is unlawful to knowingly rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary Residence by any person prohibited from establishing such permanent or temporary Residence pursuant to the terms of this Code, if such place, structure or part thereof, manufactured home, trailer, or other conveyance is located within one thousand (1,000) feet, as determined pursuant to subsection (c)(2), of any premises where children commonly gather.
- (b) *Penalty-Civil and Criminal Penalties.* The City shall have the power to administer and enforce the provisions of this section as may be required by governing law. Any person violating any provision of this section is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this section is hereby declared to be a nuisance.
 - (i) *Criminal Prosecution.* Any person, firm or corporation violating a provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00) per violation. Each day that any violation of this ordinance shall continue shall constitute a separate offense.
 - (ii) *Civil Remedies.* Nothing in this section shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this section and to seek remedies as allowed by law, including, but not limited to the following:
 - A. Injunctive relief to prevent specific conduct that violates this section or to require specific conduct that is necessary for compliance with this section; and
 - B. A civil penalty up to one hundred dollars (\$100.00) per day when it is shown that the defendant was actually notified of the provisions of the section and after receiving notice committed acts in violation of the section or failed to take action necessary for compliance with this section; and
 - C. Other available relief.

- (7) *Affirmative Defense.* It is an affirmative defense to prosecution for an offense under this section that on or prior to the date of the alleged offense, the property owner conducted a criminal history check with the Texas Department of Public Safety and reviewed the department of public safety's sexual predator registration database, and that at the time the property owner conducted the criminal history check and reviewed the sexual predator database the sexual offender's criminal history did not include a record of a sexual offense and the offender's name did not appear in the database.